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DEC 07 2005

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)

Plaintiff,) A02-0007-CR (JWS)

vs.)

GABRIEL CLARK-AIGNER,)

Defendant.) **MOTION FOR EVIDENTIARY
HEARING ON DISPUTED ISSUES**

Excludable delay under 18 U.S.C. § 3161(h), delay attributable to filing by defendant, may occur as a result of the filing or granting of the present filing.

Gabriel Clark-Aigner moves the court to hold an evidentiary hearing on the disputed issues presented in his petition under 28 U.S.C. 2255. In essence Mr. Aigner contends that his former counsel, Matthew Claman, proved ineffective by reason of failing to adequately communicate with and/or explain to Mr. Aigner the implications, in terms of sentencing, of his proceeding to trial versus negotiating a Rule 11 plea agreement. In addition, Mr. Aigner claims that Mr. Claman did not adequately communicate with him concerning the actual or probable risk that he would receive a sentence in excess of 10 years imprisonment.

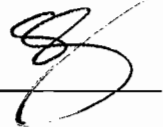
Undersigned counsel contacted Mr. Claman and has been in communication with Mr. Aigner. Mr. Claman's recollection is that he and Mr. Aigner enjoyed adequate attorney-client communications and that Mr. Aigner sufficiently understood his Rule 11 agreement and its implications.

Mr. Aigner does not agree. There does not appear to be any satisfactory way of resolving their differences short of holding an evidentiary hearing, taking testimony and allowing the trier of fact (in this instance, the court itself) to weigh the relevant evidence and make a decision.

In sum, Mr. Aigner's petition sufficiently sets forth his contentions that he did not receive effective assistance of counsel. It appears that an evidentiary hearing is necessary to resolve the disputed issues. An Affidavit of Counsel and proposed Order are attached.

RESPECTFULLY SUBMITTED this 5th day of Dec., 2005 at Anchorage, Alaska.

Sterling & DeArmond, P.C.
Counsel for Defendant
Gabriel Clark-Aigner

By: 
Scott A. Sterling

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served by
(U.S. Mail, first class, postage-prepaid)(delivery)(~~fax~~), on the 5th day of
Dec., 2005 upon:

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